

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 23-CR-36 (JRT/JFD)

UNITED STATES OF AMERICA,

Plaintiff,

v.

**AMENDMENT TO GOVERNMENT’S
POSITION ON SENTENCING (Dkt. No. 56)**

KASSIUS ORLANDO BENSON,

Defendant.

On March 13, 2024, the government filed its position on sentencing with this Court. Dkt. no. 56. In that document, the government cited *United States v. Soperla*, saying that “[e]traordinary justification” is needed for “a variance to zero prison time where the Sentencing Commission has found that substantial prison time is indicated.” 494 F.3d 752, 755 (8th Cir. 2007). Defendant Benson correctly noted in his response to the government, dkt. no. 61, that the Supreme Court in *Gall v. United States*, rejected the need for a court to “require ‘extraordinary’ circumstances to justify a sentence outside the Guidelines range.” 552 U.S. 38, 47 (2007). The government apologizes for the inclusion of *Soperla* and its reasoning in the position on sentencing. Further, although the government cited *United States v. Ture*, 450 F.3d 352 (8th Cir. 2006) and *United States v. Carlson*, 498 F.3d 761 (8th Cir. 2007) for the proposition that the Eighth Circuit found

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criminal tax violations to be serious criminal conduct, it was a mistake not to note that these two cases relied on the same language that *Gall* rejected.

Dated: May 6, 2024

Respectfully submitted,

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s/ Matthew J. Kluge

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